

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matters of the Due Process Requests of:

JUSTUS F. & PRESLEY F.,

Petitioners,

vs.

HARBOR REGIONAL CENTER,

Respondent.

OAH Nos. 2013020457 &
2013020468

California Early Intervention
Services Act (Gov. Code, § 95000
et seq.)

DECISION

These consolidated matters were heard by Eric Sawyer, Administrative Law Judge, Office of Administrative Hearings, State of California, on April 8 and June 6, 2013, in Torrance. The parties presented the testimonial and documentary evidence described below and gave closing arguments. The record was closed and the matter was submitted for decision at the end of the hearing on June 6, 2013.

Petitioners were represented by their mother.¹

Gigi Thompson, Manager Rights Assurance, represented the Harbor Regional Center (HRC or Respondent).

ISSUE

Are Petitioners' parents entitled to reimbursement for occupational therapy and feeding services provided by the NAPA Center from October 19, 2012, through January 15, 2013?

EVIDENCE RELIED UPON

Documentary: Respondent's exhibits 2-43 and Petitioners' exhibits A-FF.

¹ Full names of Petitioners and their family members are omitted to protect their privacy.

Testimonial: Dorla Watson, HRC Program Manager; Petitioners' mother and father; Jennell Mundorf, OTR/L NAPA Center; and Pam Hellman, HRC Occupational Therapist.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Petitioners are 37 months old. Justus is a boy and Presley a girl. Justus was the second, and Presley the fourth, of quadruplets born prematurely. Petitioners remained in a neonatal intensive care unit for six months, and thereafter were referred to HRC's Early Start program² for risk of developmental disability due to their premature birth.

2. Petitioners transitioned out of HRC's Early Start program after turning three years old in January 2013. They are not eligible for regional center services under the Lanterman Developmental Disabilities Services Act (Lanterman Act) for those over the age of three, but are now eligible for special education services with their local school district.

3. On December 7, 2012, Petitioners' parents requested HRC to reimburse them for occupational therapy/feeding services provided by the NAPA Center from October 19, 2012, through January 15, 2013 (when Petitioners turned three years old).

4. By letters dated January 18, 2013, Petitioners' HRC Counselor advised their parents that the reimbursement request had been denied, because HRC determined that Petitioners had been provided with sufficient services by other providers and the NAPA Center services were an enhancement the parents pursued on their own unbeknownst to HRC and without its consent.

5. On February 8, 2013, Petitioners' mother submitted to HRC an appeal for each Petitioner requesting reimbursement for the services incurred at the NAPA Center, from the evaluation in October 2012 through Petitioners' third birthdays. The total amount requested is \$8,400.

6. The appeals were on forms used for Fair Hearing Requests under the Lanterman Act, as opposed to a Due Process Hearing Request forms used in Early Start cases. Because the appeals were filed on forms used for Lanterman Act cases, and because Petitioners were older than three when the appeals were filed, HRC

² "Early Start" is another name for the California Early Intervention Services Act (Gov. Code, § 95000 et seq.)

treated these cases as appeals under the Lanterman Act, which have longer deadlines than Due Process matters under the Early Start program.

7. It cannot be determined how or why Petitioners' mother submitted the wrong appeal forms. The denial letters for the reimbursement requests indicated that a "Due Process Hearing Request Form" and instructions had been included, but a copy of the entire package sent to the parents was not presented. However, it is noted that written notices were also sent to Petitioners' parents at or about the same time, advising them that Petitioners were not eligible for services under the Lanterman Act, and indicating that a "Request for Fair Hearing form" had been included with that notice. Neither party presented any other evidence on this issue, so it was not established whether HRC provided the wrong forms to the family, or if the family confused the two forms they received and submitted the wrong ones in this case.

8. Based on the above, the initial hearing date was scheduled pursuant to timelines established for the Lanterman Act. At the commencement of the hearing, the ALJ consolidated both matters for hearing and decision, because both involved the same parties and issues. The ALJ also determined that this case was an appeal for reimbursement under the Early Start program. The parties were unable to present all of their evidence and arguments on the first day of hearing, so a second hearing day was scheduled consistent with the availability of the parties and the ALJ, as well as the congestion of the OAH calendar.

Initial Services Provided to Petitioners Funded by Their Parents and HRC

9. Petitioners were referred to HRC in June 2010. Petitioners, and their other surviving quadruplet sister, Reagan, had been observed by HRC Clinical Staff since shortly after birth due to their at risk status. Reagan did not require any further services from HRC. The fourth of the quadruplets, Lidia Rose, passed away at birth.

10. Petitioners suffer from a constellation of complex medical problems, including a G-Tube required for feeding.

11. On December 17, 2010, the parties held Individual Family Service Plan (IFSP) meetings for Petitioners. HRC agreed to fund in-home monthly occupational therapy (OT) consultations by Laura Miller, as well as monitor medical reports for progress every six months.

12. Ms. Miller completed an OT Developmental Evaluation on December 17, 2010. At that time, Petitioners were being fed through G-tubes, as well as with a bottle. They also received two solid food meals a day of rice cereal. Their developmental status at this time was at or close to their adjusted age in all areas. Petitioners' ages were adjusted because of their premature birth. Ms. Miller recommended continuing monthly OT consultations and to work on several goals over the next six months.

13. By December 2010, Petitioners were receiving services from Torrance Memorial Medical Center (TMMC) paid for by insurance. Some of those services including feeding/swallowing evaluation and therapy due to concerns by their gastroenterologist. Those problems limited their ability to eat. That is a significant concern for a premature infant.

14. Petitioners were provided feeding and swallowing therapy for three months at TMMC until March 4, 2011, when their parents' insurance no longer funded the service. In a discharge report, TMMC staff recommended that Petitioners continue individual swallow therapy once per week with a therapist certified in swallow therapy.

15. In March 2011, Petitioners' gastroenterologist, Dr. Mehra, prescribed a feeding evaluation and thereafter OT feeding/swallowing therapy to address Petitioners' phase swallowing problems.

16. In March 2011, Petitioners' family also utilized a community resource, the Tichenor Orthopedic Clinic for Children (Tichenor), to conduct an OT Feeding Evaluation. Tichenor's reports for Petitioners confirmed that both had oral motor coordination difficulties, oral phase swallowing difficulties and food aversion, which made eating difficult. Tichenor recommended OT feeding therapy once or twice per week for six months. Tichenor had also provided PT to Petitioners for a period of time unspecified.

17. In March 2011, Petitioners' mother contacted HRC to request funding to continue feeding therapy, since her insurance no longer covered it with TMMC. In doing so, she expressed concern to HRC staff that Petitioners' feeding problems persisted. HRC staff recommended that Michi Mori provide both OT and physical therapy (PT) service to Petitioners, related to their feeding issues, at the family's home, twice per week. Ms. Mori is not certified in swallowing therapy, but has over 20 years' experience working with infants encountering feeding problems. By March 17, 2011, HRC staff agreed to fund Ms. Mori to conduct a feeding evaluation of Petitioners.

18. On April 15, 2011, Ms. Mori completed her feeding evaluation. Recommendations were made to the family. Following this report, HRC agreed to fund Ms. Mori to provide OT feeding services once per week in the family home. Ms. Mori began providing OT feeding services to Petitioners in May 2011.

19. On August 30, 2011, the parties conducted another IFSP meeting for Petitioners. The parents expressed concerns regarding feeding issues and related oral motor problems. The IFSP generated from that meeting acknowledged that Justus was delayed in all areas of development, i.e., he had global delays. HRC agreed to fund developmental evaluations for both Petitioners, and to continue Ms. Mori's OT

feeding service. Notes in Petitioners' Consumer Transaction files written about this time indicate that results of the Ages and Stages Questionnaires (ASQ) showed both Petitioners "were very delayed in all areas." The ASQ is used to identify potential health, developmental, or social-emotional problems in infants and young children.

20. On October 7, 2011, HRC Nurse Kira Patton conducted a Nursing Assessment for Petitioners. Among many findings, Nurse Patton noted Petitioners still demonstrated feeding problems.

21. In Ms. Mori's progress report dated October 14, 2011, she noted that Petitioners were making slow but steady progress, were occasionally drinking liquids from a cup and were also putting some foods in their mouth, although they were not actively chewing or swallowing. Petitioners' parents were unhappy with the progress, and Ms. Mori noted there were behavioral problems that hampered her service.

22. On December 7, 2011, the parties conducted the third IFSP meeting for Petitioners within approximately 12 months. During the meeting, the parties still noted their concern over Petitioners' persistent feeding and swallowing problems, and delayed gross motor skills. In fact, Petitioner's mother advised that the infants were developing food aversion and sometimes gagging on food given to them. Results of the Bayley Scales of Infant and Toddler Development (Bayley) test administered a few months earlier were reviewed, which indicated that Petitioners were delayed in most areas. Presley was slightly delayed (actually borderline) in cognition, and Justus was at his adjusted age equivalent. HRC agreed to continue funding Ms. Mori's OT feeding service, as well as fund in-home PT by Sara Fox once per week for one hour.

23. Petitioners' Consumer Transaction notes for December 16, 2011 show HRC staff had begun looking at that time for another OT feeding service provider. By no later than February 2012, Ms. Mori indicated to HRC that her services may not be appropriate for Petitioners, and it was clear from the discharge report she later wrote that none of the program goals had been met. Because Ms. Mori had noted behavioral problems as an impediment to her service, HRC staff felt group therapy instead of 1:1 may be better, as peer role modeling might help modulate Petitioners' behaviors.

24. In February 2012, HRC approved funding for Petitioners to receive group speech therapy twice per week with Kids in Motion.

25. In a report issued in February 2012, Tichenor indicated that Petitioners' scores on the Hawaii Early Learning Profile (HELP) test showed delays in all areas, including cognition. Tichenor did not adjust Petitioners' ages due to their premature birth, presumably because they were two years old when tested. Petitioners' Consumer Transaction notes indicate HRC received information from Tichenor in June 2012, but the exact information received was not established.

26. In or around March 2012, HRC considered transitioning Petitioners to the Table Tots Program at Miller's Children's Hospital (Table Tots), which provides group feeding therapy. Table Tots initially rejected Petitioners because of their complicated medical histories, G-Tube feeding, and behavior issues.

27. Petitioners' expert witness, Jennell Mundorf, testified that Table Tots was not an appropriate service at that time because the infants needed 1:1 assistance and not group therapy; Table Tots could not effectively treat sensory needs related to their feeding problems; and it was difficult to get Petitioners to sit upright at the eating table for prolonged periods. At the time, HRC OT Pam Hellman believed Table Tots' would effectively address the behavior problems with peer modeling, so she asked Table Tots to reconsider. Table Tots ultimately agreed to provide services to Petitioners. However, as circumstances would later reveal, this was probably a mistake for the reasons indicated above, i.e., Table Tots' reluctance to take Petitioners, as well as the opinions offered by Ms. Mundorf.

28. Sometime between January and March 2012, Petitioners' parents paid for an OT feeding consultation by Silke Hamilton. Ms. Hamilton provided a report to Petitioners' gastroenterologist, Dr. Mehra, outlining Petitioners' feeding problems. Petitioners' mother advised HRC staff of her consultation with Ms. Hamilton, who was a former OT feeding vendor of HRC, but it was not established whether she forward Ms. Hamilton's reports to HRC.

29. In April 2012, HRC decided to fund Table Tots to provide Petitioners' OT feeding. The service began in May 2012.

30. By no later than April 23, 2012, Petitioners' mother asked HRC staff to fund OT feeding services provided by the Pediatric Therapy Network (PTN) instead of Table Tots. One thing that attracted her interest was that PTN was a center-based program, offering services in PT, SLT, OT and feeding therapy. HRC staff, including OT Hellman, did not believe PTN was appropriate for Petitioners because PTN is designed for infants with global delays, including cognitive. However, as discussed above, HRC had access to information showing Petitioners had delays in most areas; and Presley had a borderline cognitive delay. Tichenor already had found Petitioners delayed in all areas, including cognition. Though it is not clear whether HRC had the report from Tichenor, staff knew Tichenor was providing services to Petitioners. HRC maintained its decision to use Table Tots. The family acceded to HRC's decision, but Petitioners' mother continued requesting HRC to replace Table Tots with PTN over the next several months.

31. Petitioners were treated by Table Tots from April 24, 2012, through mid-September 2012. They attended 18 regular sessions. Progress was uneven, with increases met by decreases. Overall, the program was not effective, and goals were not met. Petitioners' parents were not happy. In discharge documents, Table Tots staff indicated that Petitioners may do better in a 1:1 setting.

32. On July 23, 2012, HRC staff held a transition meeting with Petitioners' mother and an employee from the family's local school district. A plan was written that day for Petitioners' transition from the Early Start program to special education services from their local school district.

33. On August 2 and 12, 2012, the parties engaged in the fourth and fifth IFSP meetings for Petitioners in 20 months. During the first meeting, Marcie Rhee of Kids in Motion administered the Bayley test on Petitioners. Petitioners were no longer scored on an adjusted age. The Bayley results indicated Petitioners had global developmental delays, including in cognition. As a result of this test, HRC staff now viewed Petitioners as globally delayed and eligible for services from PTN. HRC approved funding services by PTN, but there was an initial delay in Petitioners attending the program because PTN had a wait list.

34. In a PT discharge report issued by Kids in Motion on September 17, 2012, it was recommended that HRC continue funding PT and OT, as well as OT to address Petitioners' feeding issues. It was also noted that Petitioners had global delays.

35. Petitioners began receiving services at PTN in late September and early October 2012, where they continued until they turned three years old. Petitioners attended PTN three times per week for three hours each day, for a total of nine hours each week. The services at PTN addressed Petitioners' global functioning, and included OT/Feeding, PT and SLT.

36. PTN staff administered the HELP test to Petitioners no later than November 2012. The results of the HELP tests confirmed that Petitioners had global delays in all areas (including cognition), except fine motor functions.

37. Little documentary information was submitted from PTN. HRC OT Pam Hellman and NAPA Center OT Jennell Mundorf provided conflicting testimony over the progress of Petitioners while they received PTN services. Interestingly, Petitioners' mother was not critical of PTN when she testified during the hearing. She was the one who had persistently requested HRC provide the funding. Her main complaint about PTN was that it had a wait list and her children had to wait a few weeks before they began receiving services there.

38. PTN's discharge report was issued in late November 2012. The reports from PTN submitted into evidence do not clearly depict established goals or progress made by Petitioners toward those goals. However, both Petitioners were noted at discharge to still have difficulty with oral intake, transitioning food and swallowing, spitting up and gagging after novel foods were introduced, and tolerating tastes and textures orally, which affected their self-feeding skills. PTN recommended that Petitioners continue with feeding support, among other services.

Services Provided by the NAPA Center

39. By fall 2012, Petitioners' parents were growing frustrated over Petitioners' persistent feeding problems. They had made little progress after several months of therapy provided by the HRC-funded vendors. After transition meetings with Petitioners' local school district, it was apparent to Petitioners' mother that feeding therapy would have little or no role in their special education programs. The family also was getting nervous that Petitioners' time in the Early Start program was running out as they were approaching their third birthdays. After their struggle to get PTN approved for feeding therapy, Petitioners' parents were also frustrated that it could take up to six weeks before Petitioners could attend sessions there.

40. At this time, Petitioners' pediatric pulmonary physician became aware of the parents' concerns and recommended that they take Petitioners to the Neurological and Physical Abilitation (NAPA) Center to address their persistent feeding problems, as well as their other developmental delays.

41. The family initially took Petitioners to the NAPA Center on October 19, 2012, for OT evaluations. By this time, Petitioners had just begun receiving services at PTN. NAPA Center recommended two or three one-hour sessions per week to address the feeding problems. NAPA Center also recommended PT to address other motor delays.

42. Petitioners' parents decided to not request HRC to fund the NAPA Center services. Time was of the essence and the parents did not want to incur a significant delay in waiting for a response. Given their past experience with requesting particular services, Petitioners' parents were not optimistic that funding would be approved or, if so, that it would be provided soon enough.

43. Petitioners began receiving services at the NAPA Center on or after October 19, 2012, and continued therapy through January 2013.

44. The first time HRC was notified that Petitioners were receiving services at the NAPA Center was on December 7, 2012, when Petitioners' mother called and asked HRC to reimburse the family for the costs they were now incurring.

45. Petitioners made good progress during the time they attended the NAPA Center. They were able to sit up at the table for longer periods, they began to eat some, handled different textures better, spit-up less, and overall, did better with food than in the past. NAPA Center OT Mundorf testified that Petitioners have made great progress as a result of the program. Petitioners' parents both testified that they have been pleased with the progress.

46. Petitioners' mother attributes all the progress solely to the NAPA Center. However, it is hard to quantify who is responsible for the progress for various reasons. For example, both experts agreed in their testimony that some progress could be expected simply as a function of Petitioners aging and maturing. It must also be remembered that Petitioners were receiving feeding therapy from PTN during the same time. Finally, though Ms. Mundorf and Petitioners' parents testified that Petitioners' progress has been "great," the only reports offered from the NAPA Center depict the progress as "good," but slow, and that the Petitioners were encountering the same kinds of problems also noted in the PTN reports. Under these circumstances, not all of the improvement demonstrated by Petitioners in their feeding can be attributed to the NAPA Center.

47. The NAPA Center charged Petitioners' family \$150 per hour for its services. Petitioners' parents testified the total amount charged to them for the services in question was \$8,400. Although the NAPA Center is not vendored with HRC, it has agreed to fund the NAPA Center to provide services to one of its consumers as a courtesy vendor through another regional center. Through that courtesy vendor process, HRC has paid the NAPA Center \$55.43 per hour.

48. The family has not paid the NAPA Center any amount. It is not clear why the family has not yet paid, though it appears they are waiting for the outcome of this case to some extent. The only documentary evidence presented regarding the NAPA Center charges were Explanation of Benefits (EOBs) sent to Petitioners' parents from their health insurance carrier. No direct billing evidence from the NAPA Center was submitted. Ms. Mundorf shed little information on this topic.

49. The EOBs regarding the NAPA Center charges indicate that the family has been billed \$300 for each initial evaluation. Some of the EOBs also include a few dates of service after Petitioners turned three. Some of the EOBs also reflect duplicative charges, i.e., two EOBs show charges for services rendered on the same dates. Excluding services rendered after Petitioners turned three, and those reflecting duplicative charges, it appears that Justus received 16 one-hour sessions and Presley 18, for a total of 34 such sessions. If the HRC courtesy vendor rate of \$55.43 per hour is used for those sessions, the total amount HRC would have paid through a courtesy vendor arrangement would have been \$1,884.62. As no other evidence was presented regarding the amount HRC would pay a courtesy vendor for an initial evaluation, and a charge of \$300 seems reasonable, it appears that HRC would have paid \$600 for Petitioners' evaluations.

LEGAL CONCLUSIONS

1. Jurisdiction for this case is governed by the Individuals with Disabilities Education Act (IDEA), which is federal law (20 U.S.C. § 1431 et seq.); and the California Early Intervention Services Act (CEISA) (Gov. Code, § 95000 et

seq.), which is state law that supplements the IDEA. Each act is accompanied by pertinent regulations.

2. The burden of persuasion to establish entitlement to services not agreed upon by a regional center is on a petitioner's family in an administrative matter under the IDEA. (See, e.g., *Schaffer v. Weast* (2005) 546 U.S. 49, 51; see also, 34 C.F.R. § 303.425(b) (1999).) In this case, Petitioners' parents have the burden of persuasion for entitlement to the reimbursement requested. (Factual Findings 1-8.)

3. The California Legislature has found that early intervention services represent an investment of resources, "in that these services reduce the ultimate costs to our society, by minimizing the need for special education and related services in later school years and by minimizing the likelihood of institutionalization." (Gov. Code, § 95001, subd. (a)(2).) The Legislature has recognized that time is of the essence and that "[t]he earlier intervention is started, the greater is the ultimate cost-effectiveness and the higher is the educational attainment and quality of life achieved by children with disabilities." (*Id.*)

4. Early intervention services are defined as those services "designed to meet the developmental needs of each eligible infant or toddler and the needs of the family related to the infant or toddler's development." (20 U.S.C. § 1432(4)(A); Cal. Code Regs., tit. 17, § 52000, subd. (b)(12).)

5. A regional center service coordinator shall continuously seek the appropriate services and service providers necessary to enhance the development of each infant or toddler being served for the duration of the infant's or toddler's eligibility. (Cal. Code Regs., tit. 17, § 52121, subd. (a)(6).) The service coordinator shall also monitor the delivery of services and the degree to which progress toward achieving outcomes is being made through the periodic review of the IFSP. (Cal. Code Regs., tit. 17, § 52121, subd. (a)(9).) An initial individualized family service plan (IFSP) shall be developed within 45 days of eligibility, and thereafter reviewed every six months or more frequently if a parent so requests. (Cal. Code Regs., tit. 17, § 52102, subd. (b).) The service coordinator shall also facilitate the exchange of information between service providers including health providers, medical case managers, regional centers and local school authorities. (Cal. Code Regs., tit. 17, § 52121, subd. (a)(11).)

6. Pursuant to Government Code section 95004, subdivision (a), the provisions of the Lanterman Act, located at Welfare and Institutions Code sections 4500 through 4846, also apply to the Early Start program. Under the Lanterman Act, the equivalent of an IFSP is the individual program plan (IPP). The planning process relative to an IPP (and therefore an IFSP by analogy) is supposed to be collaborative. (Welf. & Inst. Code, § 4646.) The IPP is created after a conference consisting of the consumer and/or his family, regional center representatives and other appropriate participants. Services and supports are only funded by the regional center after such collaboration and where both parties agree. (Welf. & Inst. Code, §§ 4646 & 4648.) If

the parties cannot agree on the provision of a service after the IPP process has concluded, the consumer is notified of his or her hearing rights, and thereafter a hearing officer shall make the decision after a hearing. A family is not statutorily entitled to unilaterally obtain services and seek regional center funding without prior notice to and consent from the regional center. (Welf. & Inst. Code, §§ 4646 & 4648.)

7. However, when a regional center has failed to provide adequate services, so that parents must fill the vacuum by obtaining an appropriate service, reimbursement is an appropriate remedy under the IDEA. (*School Committee of Burlington v. Dept. of Ed. of Massachusetts* (1985) 471 U.S. 359; *Florence County School Dist. v. Carter* (1993) 510 U.S. 7.) However, reimbursement under the IDEA is essentially an equitable remedy. (*Id.*) Therefore, the conduct of both parties must be reviewed.

8A. In this case, Petitioners' parents met their burden of proving that they are entitled to reimbursement from HRC for the NAPA Center services. HRC staff diligently provided various services intended to meet Petitioners' needs, such as PT, OT, SLT and OT/feeding. However, Petitioners' primary problem was their inability to eat, a significant problem for premature infants. That problem persisted. By fall 2012, HRC had not effectively responded to the feeding problem.

8B. HRC's decisions in that regard, while discretionary and easy to second-guess in retrospect, were still problematic. Petitioners' early health care providers recommended using an OT with swallowing certification. Even though Ms. Mori was qualified to provide OT/feeding services, she was not certified in swallowing. She ultimately concluded her program was not effective for Petitioners. The second provider, Table Tots, initially rejected Petitioners for various reasons. They only agreed to take on Petitioners because HRC requested them to reconsider. While that decision was discretionary and made in good faith, the service provider's initial decision was disregarded. Table Tots also proved to be ineffective. Petitioners' family persistently requested funding for PTN, but that request was denied because HRC did not believe Petitioners were globally delayed, including in cognition. However, an ASQ test in August 2011 and a Bayley test in December 2011 showed Petitioners were globally delayed, and that Presley was borderline delayed in cognition; and in February 2012 a HELP test showed Petitioners were globally delayed, including cognition. Later testing done by other providers confirmed both Petitioners had global delays, including cognition. HRC finally agreed with the family to fund PTN, but the timing of the decision delayed PTN providing services until late September 2012, several months after Petitioners' mother initially requested it.

8C. By fall 2012, when the family decided to approach the NAPA Center, HRC had failed to provide adequate services to address Petitioners' feeding problems. As time was of the essence, the family was justified in efforts to find a new provider that could provide effective OT/feeding services in the few months Petitioners had left in the Early Start program. Although PTN was just about to start services by this

time, the family had lost faith in HRC's decision-making regarding this issue and they followed a recommendation by Petitioners' pulmonary physician to seek services from the NAPA Center. (Factual Findings 9-40.)

8D. As indicated above, the conduct of both parties must be examined in reimbursement situations. Petitioners' parents completely failed to follow the IFSP process in obtaining services from the NAPA Center. HRC was not notified about the NAPA Center until well after the program began. Petitioners' parents failed to provide a reasonable justification for not requesting an IFSP regarding NAPA Center funding or at least advising HRC that they were seeking services there. By not advising HRC about the situation, Petitioners' parents facilitated their children receiving similar services from both PTN and the NAPA Center at the same time. Had HRC been included in the process, it would have funded only one program, but not both. To that extent, Petitioners received a windfall. By shutting HRC out of the process, Petitioners' parents also precluded the option of HRC providing the NAPA Center courtesy vendor funding at the lower rate. Though the evidence tends to indicate the NAPA Center was more effective than PTN in dealing with the feeding problems, it is not clear that all of Petitioners' improvement in that area is attributable to the NAPA Center. Moreover, the evidence is far from clear regarding how much the NAPA Center has actually billed to Petitioners' parents. (Factual Findings 41-46.)

8E. Under these circumstances, Petitioners' parents should be reimbursed for the NAPA Center services provided until Petitioners turned three. However, because Petitioners' parents completely ignored the IFSP process for reasons not justified, and the evidence is not clear that all of Petitioners' improvement is solely attributed to the NAPA Center, reimbursement should be at the HRC courtesy vendor rate, i.e. \$600 for the initial evaluations and \$1,884.62 for the 34 one-hour sessions, for a total of \$2,484.62. (Factual Findings 47-49.)

ORDER

The Harbor Regional Center shall reimburse Petitioner's parents \$2,484.62 for all of the services provided by the NAPA Center through Petitioners' third birthday.

DATED: June 18, 2013



ERIC SAWYER
Administrative Law Judge
Office of Administrative Hearings